

Jamal (Migration) [2019] AATA 5464 (21 November 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Farhan Jamal
CASE NUMBER:	1723541
HOME AFFAIRS REFERENCE(S):	CLF2013/145725
MEMBER:	Margie Bourke
DATE:	21 November 2019
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 21 November 2019 at 5:38pm

1. **CATCHWORDS**

2. *MIGRATION – Partner (Temporary) (Class UK) – Subclass 820 (Spouse) – Federal Circuit remittal – genuine spousal relationship – did not attend hearing – no request for postponement – anonymous allegation – contrived relationship – provided limited documentary evidence – no mutual commitment to shared life – decision under review affirmed*

3.

4. **LEGISLATION**

Migration Act 1958 (Cth), ss 5F, 65, 359A

Migration Regulations 1994 (Cth), Schedule 2 cls 820.211(2)(a), 820.221, r 1.15A(3)

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

5. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
6. The applicant applied for the visa on 27 June 2013 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
7. In a decision dated 26 September 2017, the delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211(2)(a) because the delegate was not satisfied the applicant was the spouse or de facto partner of the sponsor.
8. The tribunal invited the applicant to attend the hearing on 24 October 2019. In the hearing invitation letter the applicant was advised that if he did not attend the scheduled hearing the tribunal may make a decision on the review without taking any further action to allow or enable him to appear before the tribunal.
9. The applicant did not attend the hearing, and the tribunal dismissed the application for review under s.362B(1A)(b) of the Act. The applicant had provided a medical certificate received at the tribunal at 11.58pm on 23 October 2019, but the tribunal considered the medical certificate to be unsatisfactory and inconclusive. The tribunal attempted to contact the applicant by email and telephone prior to the hearing on 24 October 2019, but was unable to do so and the applicant did not contact the tribunal as requested.
10. Subsequently the applicant applied for reinstatement and provided the tribunal with an amended medical certificate dated 23 October 2019. On 14 November 2019 the tribunal reinstated the application for review under s.362B(1C)(a).
11. The tribunal re-scheduled the hearing forward 21 November 2019 at 2:30pm. The tribunal advised the applicant in the resumption of hearing notice that the hearing will not be rescheduled on the basis of a medical certificate unless it specifically states that the applicant or the sponsor are medically unfit to attend a tribunal hearing for approximately 2 and a half hours on the specified hearing date.
12. The tribunal invited the applicant and the sponsor to attend the hearing on 21 November 2019. The tribunal received a submission from the applicant on 21 November 2019 which was recorded as sent at 1.42 pm. The message from the applicant read as follows " I hope you are well. I am sending some more documents regarding our relationship which I haven't provided to the immigration before the decision. Kindly check the attached file. Unfortunately Erin [the sponsor] is unavailable for the hearing due to her mental state. I am requesting the respected member kindly consider this matter."
13. The applicant did not attend the hearing, and the tribunal did not receive a request for a postponement of the hearing. The applicant did not provide a medical certificate in relation to his non-attendance or the sponsor's non-attendance. The applicant did not contact the tribunal after sending the submission stating the sponsor could not attend the hearing. The

tribunal requested the interpreter wait for one hour after the scheduled hearing start time of 2.30pm.

14. The tribunal is satisfied based on the submission received on the day of the hearing that the applicant was aware of the scheduled hearing. The tribunal is satisfied based on the information provided in the initial invitation to hearing that the applicant is aware that if he does not attend the review the tribunal may proceed to make a decision on the review without taking any further action to allow or enable the applicant to appear before the tribunal. The tribunal has also considered the applicant's submission received on the day of the hearing scheduled for 21 November 2019, asking it to consider the submission and attached documents. The tribunal has decided to consider the evidence before it as requested by the applicant.
15. The tribunal has decided to finalise this matter in the following written decision. The tribunal has decided to make a decision on the review without taking any further action to allow the applicant to appear before it.
16. For the following reasons, the tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

17. The issue in the present case is whether the applicant is the spouse of the sponsor within the meaning of s.5F(2) of the Act.
18. *S.376 certificate*
19. There is a s.376 certificate dated 11 October 2017 issued on the Department file. A copy of this certificate was provided to the applicant in a letter dated 30 April 2019. The applicant was invited to provide any comments as to the validity of the certificate by 14 May 2019. No response to the tribunal's letter dated 30 April 2019 was received by the tribunal.
20. The certificate relates to one folio on the Department file, and the certificate certifies that disclosure of that one folio would be contrary to the public interest because it contains allegation from a source where their personal details can be identified which may potentially put them at risk. The tribunal has assessed the certificate, and is satisfied that it is valid because the information was given to the Department in confidence.
21. The information contained in the folio was provided to the applicant by the Department by letter dated 28 February 2017 in an invitation to comment on the adverse information. The Department set out the allegations from a source who wished to remain anonymous and specified that the information alleged that the applicant and the sponsor are in a contrived relationship, and that the applicant had paid the sponsor to sponsor him to the application and this money has gone towards the sponsor purchasing a motor vehicle, and that it is common knowledge amongst the sponsors friends that the marriage will dissolve once the applicant has become an Australian citizen.
22. The information contained in the folio which is the subject to this certificate has been provided to the applicant by the Department, and the tribunal was satisfied that the applicant is aware of the content of the allegation. The information including the gist of the allegations and the response provided by the applicant, was recorded in the Department decision record dated 26 September 2017, a copy of which was provided to the tribunal by the applicant. The applicant has been provided the gist of the information and he has responded to the allegation, and the applicant has provided the tribunal with a copy of the Department

decision record dated 26 September 2017, which also records the details of the allegation and the applicant's responses.

23. The applicant has been provided with the gist of all information the non-disclosed document, and all other information on the Department file, to which he is entitled. The applicant provided a response through his representative in a letter dated 26 March 2017 and attached a statement from the sponsor in a statutory declaration from the applicant as well as other documents in support of their comments and responses.
24. In order to fulfil its procedural fairness obligations, the tribunal is obligated to put this information in the allegation to the applicant pursuant to s.359A. The tribunal put the details of the allegation to the applicant pursuant to s.359A in a letter dated 26 July 2019. The applicant provided a response to the tribunal by email dated 9 August 2019. The applicant stated that he and the sponsor met on 14 September 2012, and married on 15 June 2013, and had lodged the application for the visa on 27 June 2013. The applicant stated that he and the sponsor had been under constant stress and pressure to try to establish their relationship is genuine. The applicant stated that he found the allegations offensive and baseless. The applicant stated that they felt offended and judged. He stated that he had provided his driving record and that his licence was suspended for six months in April 2015. The applicant stated he purchased an automatic car for \$800 which his wife could drive, and which she could use to drive him around while he had no licence. The applicant stated he had provided proof of purchase of the relatively cheap vehicle. The tribunal interprets the applicant's response received by the tribunal on 9 August 2019 that the applicant denies all aspects of the allegation made to the Department.
25. The applicant stated in his response that his relationship with the sponsor is a genuine and ongoing relationship, and that he and the sponsor had gone through, and are going through, difficult times waiting for the visa to be granted.
26. I accept that it is highly improbable that that a sponsorship would be financially induced by the purchase of a \$800 vehicle. I have considered the applicant's responses that the relationship is not contrived, and that he does not intend to divorce the sponsor once he obtains citizenship. I have considered the applicant's responses that the relationship is genuine and continuing, and of a long duration. I will include this information in my assessment of the evidence of the relationship further in this decision.
27. *S.359A information invitation prior to the hearing*
28. In its letter dated 2 May 2019, prior to scheduling any hearing the tribunal invited the applicant to comment or respond to information. The particulars of that information were set out as follows:- *" in the interview conducted in November 2014 it is recorded that you stated you had told your parents all the details of your immigration status, and the choices you have made and that your parents supported all your choices. Your recorded answers indicate that you had told your parents by November 2014 of your marriage and that they supported your marriage. In your statutory declaration dated 9 April 2015 you declare that you have not told your parents of your marriage, and if they found out about your marriage your parents would not accept you, ask you to leave and cut you off financially (and therefore did not support your marriage and choices.) Your representative provided submissions dated 16 April 2015 that included extracts from your statutory declaration that your parents have not been told of your marriage. Your representative provided submissions dated 22 April 2015 that your statutory declaration was incorrect and that your parents had been informed of your intention to marry the sponsor, and were furious about it and do not accept the marriage."*
29. In the letter dated 2 May 2019, the tribunal explained the information was relevant as it suggested the applicant had provided inconsistent information to the Department (and

therefore the information is also provided indirectly to the tribunal) which may indicate his evidence is not credible or reliable. The tribunal stated if it relied on the inconsistency of the information the applicant had provided in relation to his parents knowledge of his intended marriage and that attitude to his intended choices in marriage, the tribunal would find that his evidence is not credible or reliable and this would be a reason or part of the reason for affirming the decision under review. The tribunal did not identify the relevance of the information as being that it undermines the applicant's claim that he is in a genuine and continuing relationship, and that he may not therefore meet the requirements of s.5F(2).

30. The applicant requested an extension of time in which to provide his comments or response to the s.359A invitation, and the tribunal granted the applicant's request for a two-week extension of time in which to provide his comments or response. The tribunal did not receive any comments or response from the applicant within the time provided.
31. The applicant provided a response to the tribunal on 5 September 2019, which was out of time but is information before the tribunal and is considered by the tribunal. The applicant stated that his statutory declaration had contained incorrect information due to his poor English and communication skills, and his representative sent the Department the correct information so they had the correct version. The applicant submitted that the correct information is that his parents were informed of his decision to marry, and had been unhappy about it. He submitted his parents now accepted the marriage.
32. The tribunal initially considered that the applicant may have lost his entitlement to a hearing pursuant to the provisions of s.359 of the Act. However I am of the view that the letter dated 2 May 2019 did not properly describe the relevance of the information in that letter. Further the information contained in that letter refers to inconsistencies provided by the applicant and may not correctly be described as "information" for the purposes of s.359A. For these reasons the tribunal decided not to impose the severe consequence of loss of entitlement to a hearing because the applicant had not responded to the letter dated 2 May 2019 within the time and extended time provided by the tribunal. The tribunal accepts that the letter dated 2 May 2019 may not have been as precise as it should have been and may have been defective in not identifying the relevance of the information for the tribunal. Further the inconsistencies in the evidence provided by the applicant and identified by the tribunal may not have been required to be put to the applicant pursuant to s.359A to discharge the tribunal's procedural fairness obligations, as they may not be correctly described as "information". In any event the tribunal is satisfied that the applicant was advised of the concerns that the tribunal had about the inconsistencies in the evidence the applicant had provided, and there was no consequence for the applicant in his lack of response to the tribunal within the time provided.
33. In relation to the different information provided by the applicant about his parents' attitude to his intended marriage, his immigration status and his choices, the tribunal has not had the opportunity to hear evidence from the applicant in relation to the different account of what he told his parents as provided in his statutory declaration, his representative submission, and the information that the department officer states he provided to the department in a verbal interview. In the absence of any submission or direct evidence in a hearing from the applicant, the tribunal concludes it would be unfair to rely on notes taken from a departmental officer without hearing from the applicant. The tribunal considered the statutory declaration provided by the applicant, and the following submission from his representative as the information provided by the applicant, and his submission dated 5 September 2019.
34. In relation to the allegation made to the Department, the gist of which information was put to the applicant by the Department in its letter dated 28 February 2017, I have considered that the source did not remain anonymous in providing the information, and the person gave details of how they identified the parties and how they became aware of the information, and

for this reason I give the allegation careful consideration. The applicant provided a detailed statutory declaration dated 27 March 2017, and the sponsor provided an undated handwritten statement in response, in which they both state their relationship is genuine and not contrived, and they deny the allegations. The allegation that the sponsor was paid for her sponsorship by the applicant purchasing her a car, is refuted by both the applicant and sponsor, and the parties claim the car is worth very little.

35.

SPOUSE/DE FACTO (cl.820.211(2)(a), cl.820.221)

Whether the parties are in a spouse or de facto relationship

36. Clause 820.211(2)(a) requires that at the time the visa application was made, and cl.820.221 requires that at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. Based on her Victorian birth certificate I am satisfied that the sponsor is an Australian citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
37. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

38. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. Based on the registered marriage certificate I am satisfied that the parties were married in Broadmeadows on 15 June 2013. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

39. *History of the Relationship and Evidence before the Tribunal of the Relationship*

40. I am aware that the applicant has applied to the tribunal (differently constituted) on two previous occasions in relation to this spouse visa. In a decision dated 15 October 2014 the tribunal affirmed a decision of the department and found the applicant did not meet the requirements of cl.820.211(2)(d)(ii). The matter was subsequently remitted by consent from the Federal Circuit Court back to the tribunal by order dated 13 December 2014. In a decision dated 11 November 2015, the tribunal remitted the matter back to the Department with a direction that the applicant met cl.820.211(2)(d)(ii). The Department then assessed whether the applicant met the other spousal requirements of cl.820.211(2), and the delegate refused the application for the visa in the decision record dated 26 September 2017 on the basis that the applicant was not the spouse of the sponsor at the time of application which was made on 27 June 2013.

41. In support of the application, the applicant provided the application and sponsorship forms and identity documents and other information. In the forms the applicant recorded he was born in Pakistan, his parents are still alive, and he had two older sisters, one is married and one is divorced. The sponsor recorded her parents are separated and she has one older sister. The parties recorded they met on 14 September 2012 at which time the applicant was 29 years of age and the sponsor was 19 years of age. The parties record that they committed to a relationship the next month on 9 October 2012, and married eight months later on 15 June 2013.
42. The parties provided documentary evidence of their relationship including the marriage certificate, a joint bank account opened in December 2012. The applicant provided two Form 888 statutory declarations both dated 24 June 2013 in support of the application for the visa. One statutory declaration was from Sally Watson, who declared she had known the sponsor for nine years, met the applicant at her apartment and they all lived together. This document was very brief, being a total of three sentences. Although the information was relevant, it is difficult to rely on a document as evidence of a relationship that provides such limited information. The second statutory declaration was from Liridon Haziray who declared he knew the applicant since 2008, and met the sponsor nine months previously and been in contact since then. The deponent declared the applicant had been the happiest he had seen him when he got married (which was nine days before the date of this document). Again the statutory declaration had limited detail of the relationship, although I accept the applicant was happy at the time.
43. The applicant provided a statement from the sponsor about the relationship, in which she describes how they met at a friend's house, how they started to 'hang out', the night he proposed, how they started to live together, that they had their relationship registered, and then got married, and how happy she was.
44. The Department then refused the application for the visa on the basis the applicant does not meet the requirements of cl.820.211(2)(d)(ii) on 13 January 2014, and this decision was affirmed by the tribunal, and was then subsequently remitted back to the tribunal by the Federal Circuit Court, and then remitted back to the Department by the tribunal on the grounds the applicant did meet the requirements of cl.820.211(2)(d)(ii).
45. On 21 December 2015, the Department invited the applicant by letter to provide more information and evidence of his relationship with the sponsor. The Department set out the requirements of s.5F(2) and r.1.15A(3) in the letter.
46. In response the applicant provides a statutory declaration signed by himself dated 9 April 2015, and a statutory declaration signed by the sponsor dated 9 April 2015, and a collection of photographs of their wedding. The applicant's statutory declaration contained information declared by the applicant of his parents' attitude to his marriage.
47. The submissions the applicant provided to the tribunal on 21 November 2019 included copies of an application to change address to an energy provider which recorded his name and the sponsor's name, dated 8 June 2017, a letter/receipt from Ambulance Victoria to the sponsor naming the sponsor and the applicant as part of the membership dated 9 July 2017, a letter to the sponsor from the council dated 2 November 2017 in relation to a complaint about a barking dog at the next door address, a psychologist receipt dated 8 August 2017 addressed to the sponsor, shopping receipts from July 2017, a patient demographic report which records the sponsor as the applicant's spouse/partner dated 21 March 2017, a VicRoads change of address notice to the sponsor dated 5 July 2017, a collection of screenshots of text messages which records the date the screenshots were taken of the text

messages - the most recent being 6 August 2017 and the oldest being 1 March 2015 and five photographs.

48. In the period 2015 to 2017 the applicant provided further evidence of the relationship to the Department and the tribunal, in support of his application for the visa, and the second review in relation to whether he met the requirements of cl.820.211(2)(d)(ii), including bond documents, tenancy agreement, his 2015-2016 tax return, utility bills and a joint electricity bill, his job registration, photos, receipts, his magistrates' court fines, car registration, medical and psychological reports in relation to the sponsor and joint bank statements which record the sponsor's centrelink payments among other transactions. Some of these documents had been previously provided to the tribunal in relation to the earlier review. The applicant provided two statutory declarations dated 19 March 2017 from Umair Ghias and Abbey Dumbleton. The two deponents declare the relationship is genuine and the parties are happy together.
49. Prior to making any findings the tribunal had invited the applicant to provide current evidence of the relationship. The tribunal has considered the submissions the applicant provided on the day of the hearing of 21 November 2019 and also the information the applicant provided in response to the invitation to comment or respond to the tribunal in relation to the allegation received by the Department that the relationship was arranged and contrived.
50. The tribunal has noted that there were no current documents or evidence dated past 2017 provided to the tribunal in support of the application for review. The tribunal has noted that the applicant indicated the sponsor would not be attending the hearing due to her "mental state". The tribunal has noted that the applicant also did not attend the hearing and was not able to ask him about the current relationship. The tribunal has considered the document provided by the applicant to the tribunal's received on 9 August 2019 in which he claims the relationship is ongoing but under constant stress and pressure. However it is relevant to the tribunal that there is no oral evidence and limited documentary or written evidence upon which it can rely to find the applicant is in a spousal relationship with the sponsor at the time of decision.
51. The tribunal has assessed and analysed the information before it, and concludes the relationship, based on the evidence presented to the tribunal at the time of decision, is not a genuine and continuing relationship at the time of decision. As the tribunal is satisfied the evidence before it means the applicant does not meet the time of decision criteria in c;820.221, the tribunal has not proceeded to make time of application findings. These reasons are set out below, as required addressing the requirements in r.1.15A(3) and s.5F(2).

Are the other requirements for a spouse relationship met?

52. The tribunal has considered the evidence before it. In relation to this review, the tribunal has received the submissions and attachments on 21 November 2019, his undated statement received 9 August 2019, and the application for review, a copy of the Department decision record and notification, contact detail forms and the written request for extension of time in which to respond, and telephone enquiries. The tribunal has considered the evidence provided to the Department and tribunal (differently constituted) in support of the application for this partner visa in relation to whether he met the Schedule three requirements, as listed above.
53. The tribunal has considered the Department decision record dated 26 September 2017, and it records the information provided to the Department in support of the application, which all logically and chronologically predates the date of the decision record. The most recent date of information provided to the Department is recorded as February 2017.

54. The applicant's statement provided to the tribunal on 9 August 2019, asserts the relationship is genuine and that the applicant and sponsor have suffered ongoing stress and been under constant pressure, and that the applicant married the sponsor because he loved her. There is no current statement from the sponsor. There are no documents, or other information before the tribunal which could be assessed as evidence of the relationship since November 2017. The applicant provided further documents on the day of the scheduled hearing, 21 November 2019. The most recent dated document in the submissions provided on 21 November 2019 was a letter to the sponsor from the council dated 2 November 2017. This letter does not refer to the applicant and is not evidence of the relationship between the applicant and the sponsor, except for the fact that the applicant has possession of a letter addressed to the sponsor, and that the letter is addressed to the mutual address of the applicant and sponsor based on the information provided in the evidence dated 2017. All the other documents that were dated and provided by the applicant to the tribunal on 21 November 2019, were dated as August 2017. Or earlier.
55. The tribunal has also considered that the applicant has previously provided photographs to the tribunal (differently constituted and the Department. The applicant provided copies of five more photographs to the tribunal on the day of this hearing, 21 November 2019. The applicant and sponsor are in all of the photographs, and in one of the photographs there are two other people. The photographs are not dated and the tribunal is unable to identify the date when these photographs were taken, and is therefore unable to assess whether these photographs are evidence of the relationship after 2017.
56. Cl.820.221 requires that in the case of an applicant referred to in subclause 820.211(2),(5), (6), (7), (8) or (9) the applicant either (a) continues to meet the requirements of the applicable subclause; or (b) meets the requirements of subclause (2) or (3).
57. Financial aspects of the relationship: the tribunal has no information available before it in relation to whether the parties jointly own real estate or other assets, or whether they have joint liabilities, or whether they pool their financial resources, or whether one party has a legal obligation in respect of the other, or whether the parties share day-to-day household expenses *at the time of decision*.
58. The tribunal has noted the information provided in relation to financial aspects of the relationship, but none of this evidence applies to the time of decision, or within the last 2 years.
59. Nature of the household: the tribunal has no information before it in relation to whether the parties have joint responsibility for the care and support of any children, or in relation to the living arrangements of the parties, or the sharing of the responsibility for housework *at the time of decision*.
60. The tribunal has noted the information provided in relation to the nature of the household, but none of this evidence applies to the time of decision, or the period of the last 2 years.
61. Social aspects of the relationship: the tribunal has no information before it in relation to whether the persons represent themselves to other people as being married to each other, and has no information about the opinion of the parties' friends and acquaintances about the nature of their relationship *at the time of this decision*. The tribunal notes that there were five photographs provided, but these are unable to be dated and the tribunal is unable to assess whether these are current. Further, the tribunal has no information about the basis on which the parties plan and undertake joint social activities *at the time of decision*.

62. The tribunal has noted the information provided in relation to the social aspects of the relationship, but this information does not apply at the time of decision and does not apply in the 2 year period prior to the time of decision.
63. *Nature of persons' commitment to each other:* The tribunal has considered the applicant's statement provided to the tribunal on 9 August 2019, which includes the claim that he and the sponsor are still in a relationship. In the absence of other evidence, particularly any statement from the sponsor, the tribunal does not accept that there is sufficient evidence to demonstrate that relationship between the applicant and the sponsor is ongoing. The tribunal is not satisfied that there is sufficient evidence that the relationship between the applicant and the sponsor has continued, and therefore the tribunal finds the duration of the relationship has not continued to 2019, and the tribunal finds that the parties do not live together at the time of decision.
64. There is no evidence before the tribunal that the parties provide companionship or emotional support to each other at the time of decision. I have considered the applicant's statement, and interpret the statement that he claims the relationship is seen as long term. In the absence of other evidence, I am not satisfied that the evidence is sufficient to demonstrate that the parties see the relationship as long term.
65. The tribunal has noted the information and evidence provided by the applicant in relation to the nature of the parties' commitment to each other. The tribunal is not satisfied that the statement by the applicant received on 9 August 2019 that refers to ongoing stress over the last few years and that the applicant and sponsor have gone through a hard time is sufficient evidence of their ongoing commitment to each other. The tribunal is not satisfied that the evidence provided by the applicant of the parties commitment to each other indicates that the applicant and sponsor are in genuine and continuing relationship in the 2 year period prior to the time of decision.
66. After considering the evidence of the circumstances of the relationship as set out in r.1.15A(3), and in particular noting there is very little evidence of the circumstances of the relationship at the time of decision, I have reached the following conclusions.
67. Where I have considered the evidence of the circumstance of the relationship for the prescribed matters in r.1.15A(3) at the time of decision, and find there is little or no evidence in relation to the prescribed matter, I conclude this indicates there is little or no evidence of the existence of that particular prescribed item of the circumstance of the relationship and I am unable to be satisfied that there is evidence of circumstances of the relationship that indicate the applicant and sponsor are in a spousal relationship that meets the requirements of s.5F(2). Where the evidence available to me at the time of decision in relation to the prescribed matters is limited or not available at all I am unable to make any other finding than that the relationship is not genuine and continuing at the time of decision. The limited or nil evidence before me of the circumstance of the relationship in relation to each of the prescribed matters in r.1.15A(3)(a)(i), (ii), (iii), (iv) and (iv), (b)(i), (ii) and (iii), and (c)(i),(ii) and (iii) is the basis for the tribunal finding the evidence indicates the parties are not in a genuine and continuing relationship, and do not have a mutual commitment to a shared life as a married couple to the exclusion of all others, and do not live together, and live separately and apart on a permanent basis, at the time of decision.
68. Based on the limited evidence of the circumstances of the relationship in relation to the prescribed matters set out in r.1.15A(3)(d)(i), (ii), (iii) and (iv) I am not satisfied that at the time of decision the applicant and sponsor are in a genuine and continuing relationship, and I am not satisfied that they have a mutual commitment to shared life as a married couple to the exclusion of all others.

69. Based on the above reasons, the tribunal concludes that the applicant and sponsor do not have a mutual commitment to a shared life as a married couple to the exclusion of all others, that they are not in a genuine and continuing relationship, and that they do not live together, and live separately and apart, on a permanent basis, at the time of decision. Therefore, I conclude at the time of decision based on the evidence before me, the applicant is not the spouse of the sponsor and is not in a spousal relationship with the sponsor at the time of decision.
70. The tribunal has limited itself to making time of decision findings, based on the information and evidence before it.
71. On the basis of the above the tribunal is not satisfied that the requirements of s.5F(2)(b)-(d) are met at the time of this decision.
72. The requirements of cl.820.211(2)(a), (5)(e), and (6)(d) require that the applicant is the spouse of the sponsor. I am not satisfied that the applicant is the spouse of the sponsor at the time of decision so the applicant does not satisfy these criteria.
73. There is no evidence that the sponsor is deceased, and therefore the applicant does not meet the requirements of cl.820.211(7)(c). There is no evidence that the applicant has suffered family violence perpetrated by the sponsor, and therefore the applicant does not meet the requirements of cl.820.211(8)(d) or (9)(e). I am not satisfied that the applicant meets the requirements of cl.820.211(2), (5), (6), (7), (8) or (9). Therefore the applicant does not meet the requirements of cl.820.221(1)(a).
74. Further there is no evidence before me that the sponsor has died, and therefore the applicant does not meet the requirements of cl.820.211(2). There is no evidence before me that the applicant or a dependent child has suffered family violence committed by the sponsor. There is no evidence before me that the applicant has orders or obligations in relation to a child within the meaning of cl.820.221(3)(ii)(A)-(E). Therefore the applicant does not meet the requirements of cl.820.211(1)(b)
75. For all the above reasons the applicant does not meet the time of decision requirements in cl.820.221
76. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.
- 77.

DECISION

78. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.
- 79.

Margie Bourke
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).